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THE DEMOCRATIC REPUBLIC OF VIETNAM

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FOREWORD

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[Following is the translation of an article by V. Kolesnikov in Byulleten' Verkhognogo Suda SSSR (Bulletin of the Supreme Court of the USSR), No 3, Moscow, 1961, pp 36-40.]

In the whole system of socialist state government organs which secure the practice of principles of socialist legality an important place is occupied by the supreme courts. The jurisdiction and functions of the supreme courts in the countries of the socialist camp depend on the specific historical development of the process of establishing and reinforcing the dictatorship of the proletariat in a socialist state.

In the years 1958 to 1960 -- a period of building the foundations of socialism in the Democratic Republic of Vietnam [DRV] -- reorganization of the court system has been conducted with a view to further strengthening socialist legality and raising the role of the courts in the defense of the popular-democratic order, and the rights and legal interests of the workers.

After 80 years of heroic struggle, the people of Vietnam have thrown off the yoke of royal enslavement and annihilated the feudal monarchy.

"In 1945 the Soviet army under the general leadership of the Communist Party of the Soviet Union brought fascism to utter defeat; at the same time conditions conducive to the development of world revolution were created. Taking advantage of the circumstances, the Communist Party of Indochina stirred the entire Vietnam people to the struggle for the control of the state. In August 1945 the revolution won." [See Note] For the first time in the history of Vietnam an independent workers state was created. ([Note]: Ho Chi Minh, Izbrannyye stat'i i rechi (Collected Article and Speeches), Gospolitizdat, 1959, pages 4-5).

The genuinely democratic character of the new independent state was embodied in the Declaration of Independence (2 September 1945), in the Constitution of the DRV (8 November 1946), and in other legal acts which determined the organization and activity of all the state organs including the judicial organs.

The court system of the DRV was created in the course of the August revolution.

Two months after the creation of the independent popular-democratic state, on 25 November 1945 the Supreme Court was established with the duty of supervising the judicial activities of all the courts of the country.

The First Constitution of the DRV of 1946, which reflected the greatest achievements of the popular-democratic revolution, secured a single court system composed of district courts of the first instance, provincial courts of the second instance, appellate courts, and the supreme court. In Chapter 6 of the Constitution genuinely democratic principles of court activity are defined; popular participation as jurors in the administration of justice, the independence of the courts and their subordination to the law alone, open court examinations, the right of the accused to a defense, the national language of the court process, and so on.

However, in the difficult conditions of the bitter war against foreign interventionist and the postwar reconstruction period, the Supreme Court of the DRV could not function and was not put into operation.

As a result of the consolidation of the popular-democratic order, the need developed for the improvement of a judicial system and, in particular, for the reconstruction of the leadership of the judicial organs during the transition to the new period of the development of the popular-democratic state.

At the 8th session of the National Assembly of the DRV in 1958, the dual direction of the courts by the higher courts and the provincial administrative committees was abolished and the Supreme People's Court [SPC] was set up as the highest judicial organ in the DRV.

The direction of all the state courts was vested in the SPC.

In conformity with the decision of the 8th session of the National Assembly of 20 October 1959, the Council of Ministers of the DRV adopted a resolution on "the Duties and Functions of the Supreme People's Court," which specified and broadened considerably the functions of the highest judicial organ of the DRV.

Surveillance over the judicial activity of the local people's courts and military tribunals was vested in the SPC of the DRV. In this way, the SPC of the DRV, as the highest judicial organ, unites the genuinely democratic court system including the specialized courts. In conformity with the indicated resolution, the SPC of the DRV can appear as a court of the first or second instance, revise sentences and decisions passed, and also examine sentences calling for the highest form of punishment -- the death penalty. The SPC guides judicial policy and publishes guiding instruction on the application of legislation and the procedure for consideration of criminal and civil cases. As an example we might cite SPC instruction No 772 of 10 July 1959 "On the Discontinuance of the Old Colonial Feudal Laws". With a view to preserving social order and the security of the citizenry under the circumstances, the revolutionary government published a decree on 10 November 1945 temporarily allowing the application of several regulations of colonial-feudal legislation. In its instruction, the SPC noted that at the new stage of development of the revolution in circumstances for the further advance of Northern Vietnam to socialism and with new legislation available, the need for applying the old legislation had disappeared. The SPC obliged the courts to be directed in the future by the legislation published in the DRV and

to conform to the policy of the party and government and to the judicial practice of the local people's courts and the SPC. In case of difficulty the courts have the right to turn to the SPC for clarification. ([Note]: Official herald of the DRV Kong Bao of 10 July 1959, No 29).

These instructions of the SPC have played a great role in improving the work of the judicial organs and in evolving a unified concept and application of popular-democratic legislation.

Instruction No 1033 of 23 September 1959 of the SPC "On Deciding Civil Suits Related to the Agricultural Collectivization Movement" also had major significance for the improvement of the activities of the courts of the Republic.

The Supreme Court explained to the courts that for the purposes of strengthening national solidarity and developing the collectivization movement and for the growth of agricultural production, the courts should base their decisions on the fundamental principles of the agricultural collectivization taking place and should be guided in the consideration of civil suits by the policy of the party and government on collectivization matters.

Sometimes the SPC publishes acts jointly with other departments; on 11 August 1959, joint circular No 73 of the Ministry of Justice, the Ministry of National Security, the SPC, and the Procurator General, entitled "On the Conditions and Procedure for Early Release of Convicted Prisoners," was published. ([Note]: Kong Bao, 1959, No 32).

In the circular, the SPC and the aforementioned departments, with the concurrence of the office of the Prime Minister, clarified the aims and significance of early release and the conditions and procedure for reviewing cases for early release of convicts. Shortening the sentence in simple criminal cases for prisoners who have demonstrated correction by sincere repentance, exemplary conduct, and honest attitude toward work should be reviewed by the provincial or municipal people's court on the basis of the presentations of the police and ratified by the Procurator.

For those convicted for more than two years, a petition on shortening the sentence is made by the Ministry of State Security and their cases are passed on to the Procurator General and then to the SPC which, in a court session, passes a resolution on reducing sentence. This category of cases is considered by a judicial committee of the SPC with a complement of three judges (the chairman of the SPC or his deputy and two members of the court). The resolution of the SPC on reducing sentences goes for approval to the provincial (or municipal) people's court which passed sentence.

The SPC studies and disseminates the judicial practice of local people's courts, manages the complex of judicial personnel and maintains complete control over the administration of justice in the Republic.

The SPC is composed of a chairman, deputy chairmen, and judges and acts through two judicial boards on criminal cases, a judicial board on civil cases, and a military board. Besides this there are an office (kantselyariya) and two other departments (otdel) in the SPC filled by the chairman of the SPC with the approval of the Prime Minister.

In September 1960 the DRV observed its fifteenth anniversary. Under the guidance of the Workers Party of Vietnam, the country has achieved significant successes in the construction of socialism. With the help of the Soviet Union and other fraternal socialist countries, the industry of the DRV has developed quickly. More than 100 industrial enterprises have been built and put into operation. In 1961 the Vietnamese people have been working for the realization of the First Five-Year Plan for the development of the economy of the country. Great successes have been achieved in the socialist reconstruction of agriculture. About 35,000 agricultural cooperatives have been organized in the country uniting 55% of the peasant families.

Radical changes in the class structure of society and the great achievements of the young Vietnamese state in the economic, political, and cultural fields have required the introduction of amendments to the Constitution of 1946.

On 1 January 1960 the new Constitution of the DRV came into force. Article 4 of the Constitution, in conformity with the program of the Workers Party of Vietnam, states that all state organs in the DRV work on the basis of the principle of democratic centralism. This principle underlies the organization of the judicial system of the DRV, secured in Chapter 8 of the Constitution. In agreement with the 1960 Constitution, the SPC is at the head of the single judicial system, and maintains review over the judicial activities both of the local people's courts and courts martial (Article 103). The SPC is responsible to and subordinated in its own work to the National Assembly, and, in the period between its sessions, to the Permanent Committee to the National Assembly (PCNA). (Article 104).

The law "On the Organization of People's Courts" of 14 July 1960 which was adopted during the development of the new Constitution, achieved the reorganization of the judicial system of the DRV.

Restated in the law are the constitutional democratic principles of the organization and activities of the courts, and, reemphasized is the unity of the judicial system of the DRV consisting of the following links:

The Supreme People's Court
Local People's Courts (See Note 7), and
The Courts Martial

(Note 7): The local people's courts are divided into two groups:

- (1) District people's courts, people's courts in cities under provincial subordination and in provincial centers and administrative units on the same administrative level.
- (2) Provincial people's courts, people's courts of cities with central subordination and administrative units placed on the same administrative level.)

In the new law, the jurisdiction of the SPC is regulated in more detail. The highest judicial organ of the DRV has the right:

1. To consider, as a court of the first instance, the cases pertinent to the law within its jurisdiction and also cases within the jurisdiction of lower courts but demanded and obtained from them for its own execution.

Sentences and decisions taken by the SPC as a court of the first instance are final.

2. Consider as a court of the second instance appeals or protests of sentences and decisions of the lower people's courts.

3. Consider as a judicial review the sentences and decisions passed "in case of evidence of error" or to entrust retrial of cases as a judicial check to the lower courts.

In considering cases or review of sentences and decisions, the SPC acts with a staff of three or five judges. The chairman of the SPC presides over the judicial jurors or designates one of his deputies or judges of the court as chairman.

The local courts have the right to raise the question of retrial to the SPC. All death sentences, before they are executed, must be brought for approval to the Plenum of the SPC. The Chief Procurator of the Supreme People's Procurate has the right to attend the hearing of the Plenum of the SPC. (Note: In the 1960 Constitution of the DRV the General Procurate was renamed the Supreme People's Procurate.)

In case of disagreement between the Chief Procurator and the decision of the Plenum of the SPC, he has the right to make a presentation to the PCNA.

In regard to the sentences and decisions passed by the SPC the representative of the SPC has the right, in case of evidence of error, to bring cases for the consideration of the judicial committee of the SPC.

Judicial committees are set up in the SPC and in the provincial people's courts (and in equivalent administrative units) with a view to disseminating judicial practice and considering the most complicated cases and other questions which pertain to judicial activity.

The chairman of the court, the deputy chairman, and several judges are on the judicial committee. The chairman of the SPC presides over the sessions of the judicial committee. The decisions of the judicial committee are adopted by a simple majority. In the sessions of the judicial committee of the SPC, the Chief Procurator of the Supreme People's Procurate has the right to participate.

The Supreme People's Court is in charge of the preparation of personnel for the local people's court and is responsible in matters of raising their qualifications and it guides popular legal propaganda.

The SPC instructs the lower people's courts on matters of applying laws and observing procedural rules in the consideration of cases.

The SPC has the right of legislative initiative; accordingly it may introduce drafts for laws and decrees which relate to its activity for consideration by the National Assembly or the PCNA.

The SPC is composed of a chairman, deputy chairman, judges, and alternate judges. In case of the departure of a member of the SPC for whatever reason, his place is filled by an alternate judge.

The chairman of the SPC is chosen and removed by the National Assembly. The term of office of the chairman is five years. The deputy director, judges, alternate judges, and members of the judicial committee of the SPC are removed by the PCNA.

The structure of the SPC is determined by the PCNA.

Since October 1960, the SPC has published a monthly journal Ty Fap

(Justice) in which practical and theoretical matters of juridical activity are brought out. The working apparatus of the local people's courts of all levels is informed through the instructions of the SPC. Legislation on the SPC is carried out with a view to the more successful defense of the popular-democratic order.

By order (prikaz) of the President of the DRV, Ho Chi Minh, the newspaper Nyan-Zyan (See Nyan-Zyan, No. 2,568, 1 April 1961) published the Decree (Ukaz) of the PCNA of 23 March 1961 "On the Detailed Regulation of the System of the Supreme People's Court and the Local People's Court." On the basis of Article 98 of the Constitution and the Law (Zakon) of 14 July 1961 on the organization of people's courts, the PCNA regulated in detail the structure, functions, and jurisdiction of the SPC and the local people's courts with a view to improving the local people's courts on all levels, intensifying the popular character in the organization of the people's courts, and guaranteeing accuracy and legality in the administration of justice."

In comparison with the preceding acts pertaining to the organization and activities of the SPC, the Decree of 23 March 1961 defines in a more detailed manner the rights and duties of the judicial committee, the chairman of the SPC, the deputy chairmen, and the chairmen of the judicial boards. In accordance with the new Decree the judicial committee of the SPC is charged with: (1) consideration of especially complicated cases or cases of particular importance in the first instance; (2) consideration of protests of the chairman of the SPC or the Chief Procuror of the Supreme People's Procurate to decisions of the judicial boards of the SPC; (3) dissemination of judicial practice; (4) communication to the courts of guiding instructions on matters of judicial practice and application of legislation; (4) confirmation of personnel for the judicial boards of the SPC; (5) discussion of outlines for laws and decrees introduced by the SPC for consideration of the National Assembly or the PCNA; (6) discussion of matters on the application of legislation and interpretations requested by the PCNA.

The chairman of the judicial boards of the SPC present to the judicial committee accounts of the work of the board. The judicial committee of the SPC consists of 9 to 11 members and sits not less than twice a month.

With the new Decree a Board of Appeals (kassatsionnaya kollegiya) has been built into the SPC. In connection with this has come more precise specification of the jurisdiction in criminal and civil cases of the judicial boards which have the right to consider appeal complaints and protests of sentences and decisions of the people's courts of the autonomous oblasts. The Board of Appeals can also consider appeal complaints and protests of sentences and decisions of the people's courts in a city or province or other units on the same administrative level in central subordination.

A special chapter of the Decree is devoted to the choice of popular jurors and the procedure of their work. Article 16 of the Decree states that the popular jurors shall be chosen by the PCNA from a number of

candidates to work in the SPC when acting as a court of the first instance. The candidates are to be put forward by the public organizations through their central organs. The number of popular jurors for each local people's court is established by the local People's Soviet on recommendation of the appropriate chairman of the people's court based on the instructions of the chairman of the SPC.

The chairman of the SPC: (1) gives the National Assembly or the PCNA accounts of the work of the SPC; (2) presides over the sessions of the Judicial Committee and the Plenum of the SPC; (3) presides, if he considers it necessary, over the sessions of the "specialized" judicial boards (judicial boards for criminal and civil cases and military board) and the Board of Appeals; (4) makes protests against the sentences and decisions of the people's courts of all levels in the event of evidence of error; (5) designates judges for the consideration of cases in the judicial boards and in the Board of Appeals in those cases where these boards do not have a sufficient number of judges to conduct the judicial session.

Among the other functions of the chairman of the SPC it is important to note his responsibility for the organization of judicial statistics for the whole country, the dissemination of judicial practice, and the control over the execution of the decisions of the judicial committee. The chairman of the SPC has the right to check the work of any people's court. The chairman of the SPC determines the organization and structure of the working apparatus (departments and divisions) Otdel, upravleniye with the subsequent approval of the PCNA.

In the Decree of 23 March 1961, it is reaffirmed that the Plenum of the SPC fulfills only one function determined by Article 9 of the Law on organization of People's courts: it passes the death penalty.

Consideration of the new legislation of the SPC of the DRV permits us to draw a conclusion about the prime unity of tasks and methods in the organization of judicial control of the highest judicial organ of the DRV which results from the unity of classes and the goals of socialist justice, the unity of the content and objectives of the constitutional foundations of the organization and activities of the judicial organs. At the new stage of its development, the DRV, having accomplished the transition to socialism, has achieved the building of such a judicial system and legal procedure and, in particular, judicial control on the part of the highest judicial organs which guarantees the active participation of the courts in the realization of the functions of the dictatorship of the proletariat.

Making use of the historical experience in the development of the judicial institutions and legal procedure of the Soviet Union and other socialist states, the DRV has secured the genuinely democratic principles for the administration of justice on constitutional foundations.

In its supervisory activities the SPC of the DRV relies on the experience in the development of judicial control in the USSR and countries of people's democracy, and creatively utilizes their judicial practice.

The judicial control of the SPC of the DRV as well as the supervision of the highest judicial organs of the other states represents a legal means of insuring the unity of socialist law through centralized direction of the lower judicial organs.

In all the socialist states, control over the judicial activities on the part of the highest judicial organs serves as a reliable guarantee in the implementation of the objectives of socialist justice, guarantees the unity of judicial practice and a single interpretation of the law in all courts, and guarantees the observance of the rights and legal interests of the citizens.

The SPC of Vietnam stands vigilantly at guard over socialist law and in all its activities actively fosters the further strengthening of the popular-democratic order, the successful execution of socialist construction in North Vietnam, and the struggle for the unification of the country. The prime unity of the objectives and methods in organization of judicial control by the highest judicial organs of the DRV, the USSR, and other socialist countries makes for its radical difference from the system of review of sentences and decisions in the bourgeois courts and characterizes the justice of the socialist countries as genuinely democratic, standing watch over the interests of the workers.